

HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CURTIS ROOKAIRD,

Plaintiff,

v.

BNSF RAILWAY COMPANY,
a Delaware Corporation,

Defendant

Court File No.: 14-CV000176-RSL

**PLAINTIFF'S SURREPLY TO
DEFENDANT BNSF RAILWAY
COMPANY'S MOTIONS IN
*LIMINE***

Noted on Motion Calendar:
August 28, 2015

Plaintiff Curtis Rookaird submits this surreply pursuant to LCR 7(g) to strike portions of Defendant BNSF Railway Company's ("the railroad") reply brief filed in support of its motions *in limine*.¹ The railroad filed its motions *in limine* on August 17, 2015.² Rookaird filed his response on August 24, 2015.³ Under the Local Rules, reply briefs in support of motions *in limine* are generally not permitted. LCR 7(d)(4). Notwithstanding this rule, the Court's scheduling order allows for parties to submit reply briefs.⁴ The scheduling order is silent as to the page limit of such reply briefs.

¹ ECF No. 142.

² ECF No. 123.

³ ECF No. 136. As noted in Rookaird's response, the signature line and certificate of service are dated August 25, as the motions were signed after midnight Central Time, where Rookaird's counsel is located. But because filing deadlines are 11:59 PM Pacific Time unless otherwise ordered by the Court, the response was nonetheless timely filed on August 24.

⁴ ECF No. 58.

As a general rule, reply briefs are limited to one-half the length of principal briefs absent leave of court. See LCR 7(e)(2) (principal briefs limited to 12 pages, reply briefs limited to 6 pages); LCR 7(e)(3) (principal briefs limited to 24 pages, reply briefs limited to 12 pages); LCR 7(e)(4) (principal briefs limited to 12 pages, reply briefs limited to 6 pages). This general principle is followed not only at the district level, but at the appellate level as well. See Fed. R. App. P. 27(d)(2) (discussing length limits of appellate motion practice); Fed. R. App. P. 32(a)(7) (discussing length limits of appellate briefs). In this district, even when a party seeks leave to file an over-length brief, the rules specifically provide that "[i]n all cases, the reply brief shall not exceed one-half of the total length filed in opposition." LCR 7(f)(4). Applying these general principles to the Court's allowance of reply briefs in support of motions *in limine*, such briefs should be limited to not more than 9 pages, absent leave of court. Cf. LCR 7(e)(5) (providing that motions *in limine* and briefs in opposition be limited to eighteen pages).

The railroad's reply brief totals approximately eleven-and-a-half pages.⁵ When the caption is omitted from the page count, the railroad's reply exceeds the apparent page limitation beginning with Line 15 on Page 10. Plaintiff respectfully asks that this Court strike the railroad's response in support of its motions *in limine* numbers 19-25 as being outside of the maximum length for reply briefs absent leave of Court. See LCR 7(e)(6) ("The court may refuse to consider any text, including footnotes, which is not included within the page limits."); *see also Perry v. HAL Antillen*, No. C12-0850-JLR, 2013 WL 2099499, at n.1 (W.D.Wash. May 14, 2013) (expecting strict compliance with page limitations imposed by Local Rules); *R.K. v. Corp. of the President of the Church of Jesus Christ of Latter Day Saints*, No. C04-2338-RSM, 2006 WL 2661055, at *1 (W.D.Wash. Sept. 14, 2006) (striking portions of brief that exceeded page limitations).

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⁵ This total does not include the previously filed, approximately four-and-a-half-page reply in support of the railroad's separately filed motion *in limine* to exclude James Kromwall's testimony in its entirety. (ECF No. 139).

Respectfully Submitted,

Dated: August 28, 2015

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